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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 2002, at 3 p.m.

Chairperson: Mr. PINHEIRO

later: Ms. ZERROUGUI
(Vice-Chairperson)

later: Mr. PINHEIRO
(Chairperson)

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The meeting was called to order at 3.15 p.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/7)

1. Ms. MOTOC, Chairperson-Rapporteur of the sessional working group on the administration of justice, introducing the report of the working group (E/CN.4/Sub.2/2002/7), said that two new sub-items had been added to the agenda under item 6: one on current trends in international criminal justice and one on discriminatory rules of evidence with regard to rape and sexual assault. It had been decided that international criminal justice should be discussed as an agenda item in its own right at the working group's next session, focusing not just on the ad hoc tribunals and the International Criminal Court, but also on universal jurisdiction. She noted that non-governmental organizations (NGOs) had asked to be involved more closely in the discussions on the item. It had been pointed out that even the ad hoc tribunals experienced problems with discriminatory rules of evidence with regard to rape and sexual assault and it had been agreed to consider that question further at the next session of the working group on the basis of a report by Ms. Rakotoarisoa.

2. During the discussion on the death penalty, concern had been expressed at its continued widespread application. The need to rectify the weaknesses of some judicial systems, especially in the developing countries, had been brought up. The discussion with the NGOs had been especially interesting, particularly on the relationship between religion and the death penalty, although that relationship had so many philosophical and legal ramifications that no firm conclusions could be drawn.

3. In the discussion on the privatization of prisons, it had been stressed that the main objectives of imprisonment were to reintegrate and rehabilitate offenders, not to make a profit. It had been decided, given the reluctance of the Commission on Human Rights to endorse the Sub-Commission's proposals for studies, to keep the issue under consideration by the working group for at least another year.

4. Agenda item 3, entitled "Improvement and efficiency of judicial institutions for the protection of human rights at the national level", had been discussed mainly in the context of agenda item 4, on the domestic implementation in practice of the obligation to provide domestic remedies, and would not be included in the agenda for the next session of the working group. The discussions on agenda item 4 had covered the problems of regulating the relationship between international and domestic law and the particular problems encountered by various countries in attempting to incorporate international law into their domestic legislation.

5. In her own report to the working group under the agenda item on transitional justice and mechanisms of truth and reconciliation, she had concentrated on the transitional justice mechanisms found in the countries of Eastern Europe, comparing them with the mechanisms found in other countries emerging from totalitarian regimes. On a procedural point, it had been decided, in the light of the Sub-Commission's current emphasis on research and analysis, to involve NGOs and academics more closely in the activities of the working group.

6. Mr. GUISSÉ said that everyone who had participated in the session of the working group had agreed that some of the momentum to abolish the death penalty appeared to have been lost. The decision by the Government of Turkey to abolish the death penalty was therefore especially welcome.

7. Mr. DECAUX said he believed an error had crept into paragraph 9 of the report, which gave a figure of 54 for the number of countries that had abolished the death penalty, whereas the figure given by Amnesty International in 2000 was 74. Since the death penalty had also been abolished de facto in a further 22 countries, there were, perhaps, some grounds for optimism.

8. Mr. GUISSÉ said he believed that the figure of 54 was correct and pointed out that the figures had always fluctuated to some extent as some countries had restored the death penalty. It should also be remembered that some countries had abolished it for certain offences only.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (continued) (E/CN.4/Sub.2/2002/19 and Corr.1, 20-24, 25 and Add.1 to 3, 26, 40, 43 and 44; E/CN.4/Sub.2/2002/NGO/5, 8, 13, 21, 26 and 28; E/CN.4/Sub.2/AC.4/2002/6)

9. Mr. DIACONU (Chairman of the Committee on the Elimination of Racial Discrimination), reporting on the thematic discussion on discrimination based on descent being conducted by the Committee at its current session, said that the Committee had not yet reached any conclusions on the issue and that he was therefore simply conveying his own impressions to date.

10. Descent as a basis for discrimination was sometimes confused with caste, but the discussions in the Committee had shown that it was a broader phenomenon, involving cultural and economic aspects. Descent-based discrimination resulted in violations of both economic, social and cultural rights and civil and political rights, and led in many cases to segregation, which was prohibited under the International Convention on the Elimination of All Forms of Racial Discrimination. In many countries it was effectively a cultural tradition. Yet, while all agreed it was important to promote the development of cultures, culture could not be allowed to take precedence over human rights.

11. It was important to adopt a balanced approach, but the concept was difficult to define without either making it too broad, or not going far enough and leaving vulnerable groups without protection. It was important not to confuse descent-based discrimination with racial discrimination in the narrow sense or with discrimination on the basis of membership of ethnic

or national groups. The groups in question defined themselves by origin and birth and the discriminatory treatment they suffered was a social and cultural phenomenon. His impression was that Committee members leaned towards a comprehensive definition that would encompass not only castes but also other groups with distinctive characteristics, and cover all regions where the phenomenon was to be found.

12. The Committee was determined to look in particular at the practical consequences of descent-based discrimination for human rights. It was likely that new laws would be required to prohibit segregation on the basis of descent; the elimination of poverty was an essential factor in efforts to combat such discrimination; some members of the Committee were in favour of affirmative action; it would be important to reinforce and develop institutions such as the judiciary and the executive branch, as well as education in the broadest sense. In addition, recommendations could be made to the international financial institutions to take account of such groups in development and aid projects. The Committee would ask the States parties to report on descent-based discrimination and on measures taken to eliminate it. Suitable indicators should also be developed to make it possible to assess the extent of such discrimination.

13. Ms. FREY said that discrimination based on descent or work continued to be a major factor in human rights violations around the world, with around 250 to 260 million victims. The Durban Conference had called for active efforts to address the human rights issues associated with discrimination based on birth or other status. The Sub-Commission had an important role to play in the conceptual elaboration of the issue, and she believed that one of its members should be assigned to continue the work begun by Mr. Goonesekere, paying particular attention to two issues: the legal and conceptual parameters of discrimination based on work or descent and a review of discriminatory practices in regions other than South Asia.

14. Despite the fact that a number of Asian countries had outlawed caste-based discrimination, gross human rights violations continued in countries such as India, Japan, Nepal, Pakistan and Sri Lanka. The caste system had followed the flow of migration into North America, the Caribbean and Europe, resulting in acts of discrimination in those regions also.

15. Several African countries perpetuated work stratification in caste systems that governed marriage, employment and participation in religious and political life. Members of the lowest castes were stigmatized and ostracized, and denied their rights to health care, food, education and even physical integrity. In Nigeria, the Osu - lower-caste members of the Igbo people - were shunned by the entire community if they married outside their caste and could not be buried in the same cemeteries as members of the higher castes.

16. Certain Governments had taken welcome steps to eliminate descent-based discrimination; however, members of lower castes in Africa, for example, had not successfully obtained redress under such legislation, and violations continued to have dramatic effects on the daily lives of hundreds of millions of people around the world.

17. Mr. ALFONSO MARTÍNEZ said it was clear that a discussion on descent-based discrimination would help raise awareness among the States parties and the public at large, but he wondered what specific outcome the Committee on the Elimination of Racial Discrimination

hoped for from its thematic discussion. He was concerned to avoid any possibility of duplication of efforts and to ensure the most fruitful and least redundant cooperation between the Sub-Commission and other bodies.

18. Ms. HAMPSON said she had been struck by the number of African NGOs represented at the thematic discussion organized by the Committee. There was clearly a need for the Sub-Commission to examine the issue of caste in countries outside the Indian sub-continent.

19. She hoped that, in its examination of the States parties' reports, the Committee on the Elimination of Racial Discrimination would pay particular attention not only to the incidence of descent-based discrimination but also to the reasons why the domestic remedies that existed did not work: it should ascertain whether it was a problem of training or resources or else the result of positive unwillingness to examine allegations properly and to prosecute where necessary. Progress would be made only if States could be helped to identify why the measures they adopted were not effective.

20. The concept of descent-based discrimination was not confined to the issue of caste, but it required analysis to determine when it constituted racial discrimination. She would be interested to hear whether the representatives of the Committee on the Elimination of Racial Discrimination considered the Committee or the Sub-Commission to be the appropriate body to carry out a conceptual analysis of the scope of descent-based discrimination.

21. Mr. EIDE said he was grateful to the Committee on the Elimination of Racial Discrimination for opening up the debate on descent-based discrimination, which could consequently be seen for the global phenomenon it really was. There was room for cooperation between the Committee and the Sub-Commission, particularly on the question of why such discrimination persisted despite Governments' action to outlaw it. The problem was one of deep-seated cultural practices that were, of course, reflected in political life and permeated law-enforcement agencies. It was therefore vital to reinforce the efforts of Governments through international dialogue.

22. Ms. MBONU, referring to Ms. Frey's statement, said a number of unhelpful misconceptions existed concerning the so-called Osu people in Nigeria. The system was one that was linked to traditional prejudices in certain parts of the country and was far from being a national policy; it was certainly not the same issue as that of the other castes under discussion. The system had in any case been abolished; many Osu attained the highest levels of political office. What was assumed to be a problem was not in fact a problem.

23. Mr. DIACONU (Chairman of the Committee on the Elimination of Racial Discrimination) said that the outcome of the thematic discussion on descent-based discrimination would be a general recommendation to the States parties. The Committee wished to help the States parties to understand what they needed to do and then to do it.

24. The Sub-Commission might be better placed to carry out a conceptual analysis of the issue. The Committee would then be able to apply whatever definitions the Sub-Commission produced in its consideration of the more practical questions it was normally concerned with.

25. Mr. THORNBERRY (Rapporteur of the Committee on the Elimination of Racial Discrimination) said that the Committee would welcome further cooperation with the Sub-Commission, which had made many useful contributions to its work in the past. The Sub-Commission's work on descent-based discrimination and the report by Mr. Goonesekere (E/CN.4/Sub.2/2001/16) had undoubtedly fed into the Committee's thinking and kick-started its debate on the subject.

26. For the moment, he was able to make some preliminary comments only on the overall direction of the general recommendation being considered by the Committee, which was likely to focus, though not exclusively, on certain population groups such as those defined by caste. He doubted whether there would be a definition of descent-based discrimination or of concepts such as caste, but there might be a recommendation that the States parties, on the basis of certain indicators or factors, should report on the existence of affected population groups in their territory and provide disaggregated information on the incidence of discrimination against them.

27. The recommendation would probably mention the need to introduce new legislation or, where appropriate, strengthen current efforts to address the problem. In structure, it would follow the lines of the Convention, so that themes such as segregation, the administration of justice and multiple discrimination against women would be taken up and there was likely to be an emphasis on education.

28. Mr. ALFONSO MARTÍNEZ said he was pleased to note that the conclusions drawn by the Committee from the current thematic discussions would be addressed to the States parties and not to other United Nations bodies, which had clearly distinct mandates. He was sure the Sub-Commission would provide fertile ground for further thematic discussions on matters related to the International Convention on the Elimination of All Forms of Racial Discrimination.

29. Ms. Zerrougui, Vice-Chairperson, took the Chair.

30. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that there had been such a turnaround in its policies since the end of the Second World War that the United States of America no longer deserved to house the headquarters of the United Nations. The racist decisions of the United States Government, including its withdrawal from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, revealed a shocking arrogance and ruthlessness. It had reneged on its international obligations to help halt the destruction of the environment and control the proliferation of nuclear arms. Worst of all, it had refused to support the establishment of the International Criminal Court to try war criminals and had shamefully used its veto dozens of times in the Security Council against the best interests of humanity.

31. It often denied entry visas to representatives attending United Nations meetings and refused to pay all of its financial dues to the Organization. The United Nations could not perform its duties and take impartial decisions under such pressures; its headquarters should therefore be moved to Geneva, the original home of the League of Nations and of a historically neutral and peace-loving people.

32. Ms. BOWDEN (Liberation) said that there had been little progress in protecting or preventing discrimination against minorities, which continued to suffer the full range of human rights abuses throughout the world. In the Moluccas, despite ample evidence of human rights abuses, the international community seemed unable to pressure the Government of Indonesia into finding a peaceful solution to the conflict. It was erroneous to attribute the current situation there to a religious conflict, and an international fact-finding team should be sent to ascertain the true situation.

33. In Bangladesh, the minority Buddhist, Hindu and Christian communities were suffering from a wave of violence led by Muslim fundamentalists, who were able to persecute them with impunity. In Turkey, despite the welcome amendments to the law concerning education and broadcasting in different languages, over 200 students had been imprisoned for signing a petition asking for Kurdish to be taught as an optional language. The Sub-Commission should urge the Government of Turkey to release those students, especially in the light of the report by the Special Rapporteur on the right to education on her visit to Turkey (E/CN.4/2002/60/Add.2).

34. In Japan, the State's educational policy had a significant effect on non-citizens, especially Koreans. She called on the Sub-Commission to urge the Japanese Government to comply with the recommendations of the Committee on Economic, Social and Cultural Rights in its concluding observations on the second periodic report of Japan (E/C 12/1/Add.67) that it should provide financial assistance for Korean schools and recognize their school-leaving certificates as qualifying them for university entrance.

35. In India, socially and economically marginalized sections of society, such as the Dalits, as well as religious minorities continued to suffer abuses as a result of discrimination by the State, while the perpetrators of such abuses enjoyed impunity. Tolerance and respect for the rights of persons belonging to minorities were crucial in ensuring peaceful coexistence and harmony within and between States. She therefore urged the Sub-Commission to suggest meaningful ways in which the rights of minorities could be upheld.

36. Ms. FREIH (Human Rights Watch) said that caste-based discrimination was one of the most pervasive forms of descent-based discrimination, affecting over 250 million people throughout the world. The victims of caste systems commonly suffered from total physical and social segregation and were restricted to the most menial and hazardous occupations. Moreover, their vulnerability and exploitation were sustained by a system of impunity for the perpetrators of crimes against them. Unfortunately, the existence of such discrimination was often masked by the overlapping conditions of poverty, landlessness and illiteracy, which were the result of systemic discrimination in the allocation of jobs and basic resources. In addition, lower-caste communities were disproportionately the victims of violence, bonded labour and other forms of severe abuse.

37. The same patterns of exclusion and oppression were found in many parts of the world and often coexisted with otherwise democratic structures. However, despite formal protection by law, discriminatory treatment remained endemic and discriminatory societal norms continued to be reinforced, sometimes violently, by government and private structures and practices.

38. Caste-based discrimination clearly posed enormous obstacles to the full attainment of all human rights. If it was to be completely eradicated, every appropriate forum must be used to press Governments to institute meaningful reform in the areas of legislation and public awareness. To that end, she recommended that the Sub-Commission urge Governments to establish a timetable to enforce the abolition of "untouchability" and segregation. Governments should also enact laws aimed at ending abuses associated with caste, such as child labour, land reform and forced prostitution. Lower-caste women must be protected from the double discrimination from which they suffered as members of the lower castes and as women, adequate funds must be allocated for socio-economic and educational support to lower-caste communities and Governments must ensure greater participation by those communities in civil administration.

39. Ms. LEGRAND (Fraternité Notre Dame) said that certain categories of people, such as women, children and the poor were still subject to a lack of respect and discrimination. The human rights of religious minorities were also often seriously violated. In some parts of the world, those with any spiritual beliefs had become social outcasts and were denied the right to religious freedom set out in the Universal Declaration of Human Rights, in obvious violation of United Nations principles. The word "sect" was applied to far too many religious organizations.

40. While living one's own faith, one must also respect the faith of others. Participation in inter-religious dialogue was invaluable in order to get to know those who were different, to learn about their culture, and to promote tolerance. Young people should also be involved in that process, since educating them about other cultures and social and ethnic groups helped to open their minds. She hoped that many other people would join her organization in its efforts to relieve poverty, reduce the differences between rich and poor and fight sectarianism, both material and spiritual, so that the rights of men, women and children could be firmly established.

41. Ms. SAHUREKA (International Association of Democratic Lawyers) said she wished to draw the Sub-Commission's attention to the plight of the Moluccan people who were threatened by the Indonesian military forces and their jihad mercenaries. Their repeated appeals to the United Nations and the world community for help and protection had hitherto gone unanswered. Despite the many international laws and covenants protecting the rights and lives of indigenous and other peoples, the only way for the Moluccans to defend themselves was to flee into the mountains, forests and jungles.

42. The Indonesian army enjoyed impunity and was not held accountable for its atrocities and gross violations of human rights. The war crimes and crimes against humanity perpetrated against the Moluccans had to be investigated and stopped. Her organization thus recommended to the Sub-Commission that an international fact-finding mission be sent to the Moluccas to investigate the situation. The Moluccan people urgently appealed to the United Nations for protection of their rights and their existence as an indigenous people and a nation.

43. Ms. SZIKORA (Transnational Radical Party) said that, since the President of the Montagnard Foundation had addressed the Sub-Commission in February 2001, the situation of the indigenous hill tribes of Viet Nam's Central Highlands - the Montagnards - had not improved. The Vietnamese authorities had sent more and more security forces into the region, as

had Cambodia, in order to patrol and secure their shared border and to watch and control the activities of all the villagers. Martial law was still in place and there were reports that the Vietnamese authorities had arrested, tortured and imprisoned anyone suspected of possessing cellular telephones to prevent them from sending information out of the country.

44. Her organization was very concerned at the lack of access to the region. The Committee on the Elimination of Racial Discrimination had, at the end of its session in 2001, invited the Government of Viet Nam to improve its treatment of indigenous groups and the Human Rights Committee had recently voiced concern about the living conditions of the Montagnards, but there had been no response from the governmental authorities concerned. The Sub-Commission should call once again on the Governments of Cambodia and Viet Nam to reopen their border, in compliance with the Convention relating to the Status of Refugees, and to allow members of the staff of the United Nations High Commissioner for Refugees (UNHCR) independent human rights observers and humanitarian organizations and journalists to visit the Central Highlands to monitor and report on the situation of the Montagnard people.

45. Ms. PARKER (International Educational Development) said that, under the 1949 de-colonization plan, the Moluccan people had, in 1950, decided to opt out from the future Indonesia and had declared their independence, Javanese forces had then invaded and had immediately begun trying to break down the indigenous Moluccan culture, killing its leaders and settling large numbers of Javanese who were alien to the Moluccans in language, ethnicity, religion and customs. The situation had further deteriorated in recent years with the arrival in the Moluccas of the Laskar Jihad, an organization of fundamentalist Muslims, which had begun attacking Christians and Christian property. The most recent atrocity in its campaign of violence had been a bomb attack in the capital Ambon and the repression continued with the arrest of a number of prominent Moluccans who had participated in a countrywide raising of the Moluccan flag on 25 April 2002, the fifty-second anniversary of the declaration of Moluccan independence.

46. In Sri Lanka, there was currently a good chance that the two sides would work out a peace plan and political settlement. In recent elections, both Sinhala and Tamil voters had clearly expressed their desire for peace. Although direct talks had not yet taken place, the mediation effort was continuing and international ceasefire monitors were in place. Nevertheless there were still difficulties and calls were being made by some of the most anti-Tamil Sinhala leaders to oppress Tamil aspirations. The Sub-Commission and the international community as a whole should thank the Government of Norway and the countries participating in the monitoring mission for their efforts.

47. Mr. GENIUSAS (International Federation of Free Journalists) said that reports by former occupying States alleging discrimination against minorities they had left behind them, where no human rights violations had occurred, were very disturbing. Such reports constituted the dissemination of disinformation in order to manipulate public opinion throughout the world. His organization preferred to highlight the more constructive approach to settling differences concerning minorities, such as the regional cooperation among the Baltic Sea States, the formation of the North Atlantic Treaty Organization (NATO)-Russia Council and the

European Union Northern Dimension Action Plan as positive ways of developing mutual trust and respect. In that connection, he drew attention to the Universal Declaration on Cultural Diversity of the United Nations Educational, Scientific and Cultural Organization (UNESCO) as a means of preventing discrimination against minorities.

48. The Baltic States had always favoured cultural heritage in all its forms, cooperation and good neighbourly relations. Since regaining their independence, all three Baltic States had implemented sound policies of the social integration and cultural development of minorities in full conformity with the requirements of membership of the European Union and NATO. For example, to maintain their cultural identities, national minorities in Latvia were able to receive a secondary education financed by the State in eight minority languages. In contrast, the Lithuanian minority living in the Kaliningrad enclave of the Russian Federation did not have access to a single school providing education in its mother tongue.

49. His organization urged the Sub-Commission to pay particular attention to the issues of discrimination against monitories and the victims of genocidal population policies. Even when an occupation had ceased or national oppression had slackened, such endangered peoples needed to be guaranteed the attention of the international community as a safeguard for their survival.

50. Ms. JAIMIAI (International Institute for Non-Aligned Studies) said that the failure of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to adopt a common Declaration reflected a deep-rooted inability to understand the nature of racism. The international community must carry out a thorough analysis of the phenomenon and its underlying causes.

51. Racism was based on misconceptions of biological or cultural determinism. Found in many societies throughout the world, such misconceptions gave rise to indiscriminate and irrational feelings of antagonism and fear and sometimes resulted in violent conflict. Such conflict should be seen in economi as well as cultural terms and addressed through the eradication of poverty, counter education, the destruction of mythologies, travel and, above all, the formation of truly multicultural societies.

52. Whenever racism became aligned with the distinction between various religious groups or majority and minority groups, there was a danger of a rise in communal politics. Invoking an allegedly historical loyalty to symbols, religious shrines and culture, communal political leaders stirred up hatred and violence with a view to asserting power over other sections of the community. That could lead to tragedies such as the ongoing conflicts between Israelis and Palestinians, Hindus and Muslims, or Kurds and Turks. The only effective way to combat communalism was to consolidate pluralist policies for welfare and development, firmly rooted in secularism. Similarly, xenophobia could be defeated by stressing the principle that nation States existed not to pursue territorial expansionism but to promote popular development and mass prosperity.

53. Mr. SÁNCHEZ (American Association of Jurists) said that the Mapuche Indians had been driven off their ancestral lands in the nineteenth century by Argentine and Chilean armies, and had been the victims of a prolonged campaign of ethnic cleansing by both Governments. The landownership laws adopted ever since had forced the surviving native peoples to subsist on

inhospitable marginal land or to work for landowners or the State Government in precarious and disadvantaged conditions. Moreover, national and transnational entrepreneurs coveted for various reasons the poor land worked by the indigenous peoples and were aided and abetted by the indifference or complicity of the national authorities and international organizations.

54. Despite the declaration of the International Decade of the World's Indigenous People in 1994, States continued to grant landownership rights to third persons, especially foreign investors, thus allowing ancestral lands to be exploited and polluted by multinational oil companies or private entrepreneurs. Despite the adoption in 1989 of International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, which contained some useful provisions for the protection of indigenous peoples' rights, only 17 countries so far had ratified it. He urged the Sub-Commission to adopt a resolution inviting States which had not already done so to ratify Convention No. 169.

55. Mr. KORETH (Asian Centre for Organization, Research and Development) said that, throughout history, minorities had been consistently dispossessed of their native lands and deprived of their living cultures. Research in anthropology and sociology demonstrated that the traditions, language and culture of minority groups were as essential to their survival as food and water. The extinction of minority cultures had driven many individual members of the groups concerned to experience symptoms of post-trauma stress, such as depression, temptation to suicide and alcoholism.

56. Most powerful nations had been guilty of exploiting and dispossessing minority groups through colonization, slavery, unfair trade, forcible religious conversion or the plain use of force. The results had been catastrophic for minorities such as Indians and Eskimos in North America, aborigines in Australia, native Indians in South America, Buddhist groups in China, and native groups in Africa. Although the destruction of minority cultures had yet to be recognized by law, the dispossession of land was recognized as a serious offence, the established remedies for which were, at the very least, compensation, restoration, and reparation. Nation States should be required to compensate for the expropriation of minorities in the past and the Sub-Commission was the appropriate body to draft and recommend effective and efficient means of doing so.

57. However, majority groups had the power and influence to block legal remedies of compensation, restoration and reparation. Two main arguments were used to deny reparation: firstly, that people could not be held responsible for the crimes of their forefathers and, secondly, that all States had at one time or another dispossessed native minorities, so that it was impossible to hold every State accountable. Nevertheless, in legal cases concerning private property or taxation, natural and juridical persons were required to pay damages for wrongly appropriated inheritance. Just as the principle of "polluter pays" was widely accepted in environmental law, the principle of "persecutor pays" should be established in the law relating to compensation for dispossessed minorities.

58. Mr. Pinheiro resumed the Chair.

59. Mr. LEBLANC (Dominicans for Justice and Peace), speaking also on behalf of Franciscans International, said that religious discrimination was often deeply embedded in legislation and societal structures, and was the root cause of many ongoing violent conflicts

throughout the world. In Pakistan, for example, the national legislation promoted a culture of intolerance, division and extremism. The Penal Code established a mandatory death sentence for the offence of blasphemy, despite the vague definition given to the crime itself.

60. Describing a series of massacres and attacks on Christian targets in Pakistan, he said that the blasphemy laws were often used as a pretext for religious persecution. Lawyers defending the accused in blasphemy cases were subjected to intimidation and threats. In the absence of guarantees of a fair trial, the mandatory death sentence was an extreme form of cruel, inhuman and degrading treatment. Human rights standards required countries where the death penalty was still in force to restrict its application to the most serious crimes, with stringent legal protection, and that was not the case in Pakistan.

61. He strongly urged the Government of Pakistan to take comprehensive action to end discrimination against Christians and other religious minorities. In particular, he called for it to repeal discriminatory laws, such as those relating to the offence of blasphemy, to ratify all human rights treaties, including the two International Covenants on Human Rights and to invite the Special Rapporteur on freedom of religion or belief to visit Pakistan.

62. Mr. LITTMAN (World Union for Progressive Judaism) drew attention to the large numbers of forgotten Jewish refugees from Arab countries, two thirds of whom had settled in Israel and the remainder of whom were still displaced in their countries of origin. His organization, which represented almost 2 million Jews, almost certainly spoke for the overwhelming majority of Jews throughout the world in expressing its intense disappointment at events at the recent Durban Conference. The United Nations had been hijacked by dictatorial Governments and a small group of NGOs, with a view to resurrecting the racist assertions of General Assembly resolution 3379.

63. Describing examples of violence and discrimination against Jews in the aftermath of the Second World War, he said that thousands of Jews had been killed and wounded in anti-Semitic attacks in Baghdad, Damascus, Egypt and Libya. The hardships endured by the vast majority of those Jewish refugees had never been considered by the United Nations, nor had the loss of their property and heritage. Moreover, scores of millions of refugees from other racial and religious minorities had been similarly displaced, and ignored by the United Nations, during the course of the twentieth century. He failed to understand why only Palestinian Arabs had benefited from United Nations tutelage for three generations.

64. Mr. ALFONSO MARTÍNEZ said that, although he firmly believed in the freedom of expression, there were also limits to that freedom. The previous speaker had transgressed those limits, through the offensiveness of his language to the members of the Sub-Commission who had taken part in the Durban Conference. Moreover, he disputed the assertion by that speaker that the views he had expressed were held by the overwhelming majority of Jews throughout the world. They were certainly not the views that his wife, who also happened to be Jewish, held.

65. Mr. KAZMI (Himalayan Research and Cultural Foundation) welcomed the report of the Working Group on Minorities, which contained a number of relevant comments on the situation in southern Asia. The Chairman-Rapporteur of the Working Group had rightly drawn attention to "conflict entrepreneurs", who exploited religious and ethnic differences to achieve their own political ends.

66. In his country, India, the rights of minorities were enshrined in the Constitution and protected by law. Consequently, numerous Muslims had been elected to both Houses of Parliament and a Muslim doctor had recently been elected President of the Republic. However, in the State of Jammu and Kashmir, where Muslims were the majority group, Islamist terrorists had recently been responsible for several massacres of members of the Hindu community. For the past 12 years, similar terrorist killings had been carried out periodically by criminal groups supported by hostile external forces. Measures should be taken to suppress such movements in the context of the global campaign against terrorism.

The meeting rose at 6 p.m.